IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.234 OF 2005

Bhiku Yashwant Nikam ...Applicant
Vs.
The State of Maharashtra & Anr. ...Respondents

Shri. R. S. Kate for the Applicant.
Ms Rajshree Gadhvi, A.P.P. for the Respondents.

CORAM : A. S. OKA, J.
DATE : AUGUST 22, 2005.

P.C.:

1. Rule. The learned A.P.P. waives service for the Respondents. Taken up for hearing forthwith. The learned Judicial Magistrate, First Class at Satara convicted the Applicant by the Judgment and Order dated 20th December, 2000. By the said Judgment and Order, the Applicant was convicted under section 452 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for eight months and to pay a fine of Rs.1,000/-. He was also convicted for the offence punishable under section 324 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for four months and to pay a fine of Rs.1,000/-. The order of conviction and sentence has been confirmed in appeal by the learned Sessions Judge, Satara.

2. The only submission made by the learned Counsel for the Applicant is that the learned Magistrate has not passed an order directing that both the substative sentences shall run concurrently. The learned Advocate for the Applicant submitted that the

Applicant is an ex-armyman and if he is made to undergo both the sentences seperately, he will have to undergo rigorous imprisonment for a period of twelve months. He submitted that the Applicant has received medals for meritorious services.

3. The learned A.P.P. submitted that no interference is called for in Revision Application considering the facts and circumstances of the case.

4. I have considered the submissions. It is obvious that both the offences for which the Applicant has been convicted arise out of the same incident. Considering the nature of the offences, the learned Magistrate ought to have directed that substantive sentences should run concurrently. However, the said order is not passed and while dismissing the appeal, the Sessions Court has also not passed the said order.

5. Considering the facts and circumstances of the case, I am of the view that it is necessary to modify the order of sentence by directing that the sentences shall run concurrently.

6. Hence, I pass the following order:

: O R D E R :

i) The order of conviction passed against the Applicant is confirmed.

ii) However, the order of sentence is modified. The sentence awarded to suffer rigorous imprisonment for eight months for the offence punishable under section 452 of the Indian Penal Code shall run concurrently with the sentence awarded of rigorous imprisonment for four months for the offence punishable under section 324 of the Indian Penal Code.

iii) No order as to costs.

iv) Parties to act upon an authenticated copy of this order.

JUDGE